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COMMISSION ON HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 February 1995, at 3 p.m.

Chairman:	Mr. BIN HITAM	(Malaysia)
later:	Mr. MEJIA SOLIS (Vice-Chairman)	(Nicaragua)
later:	Mr. BIN HITAM (Chairman)	(Malaysia)

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(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION (continued)

The meeting was called to order at 3.10 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1995/6-E/CN.4/Sub.2/1994/42, E/CN.4/1995/9-E/CN.4/Sub.2/1994/44, E/CN.4/1995/30, 31 and Add.1-4, 32, 33, 34 and Add.1 and Corr.1 and 2, 35-41, 100, 111 and 133; E/CN.4/1995/NGO/3, 6 and 19; E/CN.4/Sub.2/1994/22, 23 and Add.1, 24 and 33; A/49/484 and Corr.1 and Add.1)

1. Mr. TOSEVSKI (Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances), introducing the Working Group's report (E/CN.4/1995/36), said that the Declaration on the Protection of All Persons from Enforced Disappearance reflected many of the proposals and recommendations that the Working Group had made over the years and marked a milestone in the efforts of the international community to combat enforced or involuntary disappearances. So far, however, only a few Governments had adopted measures to incorporate the act of enforced disappearance into domestic criminal codes with appropriate penalties and effective judicial remedies. Moreover, very few replies had been received to the questionnaire sent by the Working Group to those Governments with outstanding cases of disappearances. The Working Group therefore requested the Commission to renew its call to Governments to provide information on the subject.

2. The previous year had shown that the policy and practice of many States continued to run counter to the Declaration. In 1994, the Working Group had transmitted 9,301 new cases of enforced disappearance to a total of 29 Governments. In order to make States more aware of their various responsibilities under the Declaration, a more effective and institutionalized monitoring procedure was essential. The Working Group therefore reiterated its proposal that a periodic reporting system be established aimed at instituting a fruitful dialogue between Governments and international expert bodies.

3. With regard to disappearances in the former Yugoslavia, he recalled that Mr. Manfred Nowak - a member of the Working Group - had been designated to cooperate with the Special Rapporteur on the situation of human rights in that territory and had been dealing with the relatives of missing persons as well

as with the governmental, intergovernmental and non-governmental institutions concerned. Mr. Nowak's activities were summarized in his report to the Commission (E/CN.4/1995/37).

4. The Working Group welcomed the fact that there had been an improvement in the cooperation extended to it by Governments. Thus, the Governments of Angola and Morocco, which had declined to cooperate in the past, had turned a fresh page in their dealings with the Working Group. There continued to be a group of countries, however, which had never replied to the Working Group's requests for information. The more than 42,000 cases pending on the Working Group's files required serious follow-up action for which the cooperation of the Governments concerned was essential.

5. Lastly, the Working Group wished to express its concern at the inadequacy of the resources placed at its disposal for the fulfilment of its mandate and called upon the Commission to increase the staff support which the Group urgently needed to carry out its task effectively.

6. Mr. NOWAK (Member of the Working Group on Enforced or Involuntary Disappearances), introducing the first report on the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1995/37), described the process as both thematic and country-specific and of a strictly humanitarian character. The term "missing persons" was broader than the "disappeared persons" expression used by the Working Group, inasmuch as it included combatants involved in an armed conflict and victims of irregular forces not connected with Governments. In carrying out his task, he was being assisted by the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, in particular through the Centre for Human Rights field offices in Zagreb and Sarajevo.

7. In July 1994, he had undertaken a mission to Zagreb and the United Nations Protected Area East (UNPA East) in Croatia and to Sarajevo in Bosnia and Herzegovina and had established valuable cooperative relations with government officials and governmental and non-governmental organizations dealing with the issue of missing persons in both countries.

8. His request to visit the Federal Republic of Yugoslavia (Serbia and Montenegro) had been rejected by the Government of that country, which he urged to change its position and cooperate with the special process in accordance with Commission resolution 1994/72 and General Assembly resolution 49/196. Contacts had, however, been established with the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) in Geneva, although no response to any of the cases of missing persons transmitted through that channel had been received from the Government.

9. Nobody knew the exact number of missing persons in the territory of the former Yugoslavia. A substantial number of persons originally reported as missing in Croatia had been traced, but the number of allegedly missing persons in Bosnia and Herzegovina was still increasing. The special process dealt only with individual cases submitted by relatives or other reliable sources containing the minimum information necessary for registering and transmitting the cases. The conclusions drawn from an analysis of some

1,400 individual cases considered so far were of a preliminary nature, particularly for Bosnia and Herzegovina, and could not be viewed as representative of the problem as a whole.

10. The cases of persons missing in Croatia were a direct result of the armed conflict in 1991 between the Croatian authorities and the Yugoslav National Army (JNA), for which the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) accepted responsibility. Paramilitary forces had also frequently been mentioned by sources as responsible for disappearances. A number of victims had reportedly been seen in detention centres in the United Nations Protected Areas or in camps in the Federal Republic of Yugoslavia (Serbia and Montenegro). Some had allegedly been deported as forced labour to mines in Serbia.

11. Croatian non-governmental organizations had reported 11 cases of ethnic Serbs detained in 1991 by the Croatian authorities, whose whereabouts were unknown. The Government of Croatia was investigating six of the cases concerned.

12. Most of the cases from Bosnia and Herzegovina concerned Muslims who had allegedly been abducted by Serb paramilitary forces or their own Serb neighbours and who were either being detained in camps in order to be exchanged in due course for Serb prisoners or were being used for forced labour. The Yugoslav National Army had also been held responsible by some sources. Two hundred cases had been transmitted to the de facto Bosnian Serb authorities. No response had been received. Bosnian Government forces were reportedly responsible for three cases concerning two ethnic Serbs and one ethnic Croat.

13. As his mandate was of a purely humanitarian character, he was not interested in clarifying such questions as the accountability of individual perpetrators. That was a matter for the respective domestic authorities. It followed that the special process could function only if all the parties concerned were willing to cooperate. Without the active cooperation of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the de facto Serb authorities in Croatia and Bosnia and Herzegovina, it would be very difficult to determine the fate and whereabouts of persons missing from their territories.

14. Although the special process mandate was broad enough to cover combatants missing as a direct result of armed confrontations, a first analysis of the individual cases processed led to the conclusion that most of the allegations could be classified as enforced disappearances in the narrow sense of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance. Most victims appeared to be civilians who had been detained or abducted by military or paramilitary forces in ethnic-cleansing operations.

15 Under the 1992 Declaration, all States were to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, to investigate thoroughly all alleged cases and to bring the perpetrators to justice. On behalf of those who suffered as a result of such gross violations of human rights, he strongly

appealed to all the Governments and de facto authorities concerned to halt the practice of ethnic cleansing and disappearance and to cooperate with the special process.

16. Mr. JOINET (Chairman/Rapporteur of the Working Group on Arbitrary Detention) introducing the Working Group's report (E/CN.4/1995/31 and Add.1-4), said that it had been greatly reduced in size to improve its chances of being read. Communications concerning 293 persons had been received in 1994, as compared with 181 in 1993. Of the 29 Governments concerned, 16 had responded in connection with 90 persons. Forty-one urgent appeals to 29 Governments had elicited responses in most cases and had led to the release of the persons concerned in 10 cases.

17. The Working Group wished to focus on three points of crucial importance for its work: cooperation with the Commission, the establishment of a follow-up mechanism, and coordination with other mechanisms and procedures.

18. On the first point, the Working Group had, in pursuance of Commission resolution 1994/33, developed closer cooperation with the Special Rapporteur on the right to freedom of opinion and expression. In accordance with Commission resolution 1994/42, it had also begun to cooperate with the Association for the Security and Independence of International Civil Servants. Cases of arbitrary detention involving women were currently recorded as a separate item in accordance with Commission resolution 1994/45. As for Commission resolution 1994/70 concerning the protection of victims and witnesses, the Working Group had received allegations concerning only one case under that heading and had insufficient information to report to the Commission thereon.

19. Under Commission resolution 1994/46 on human rights and terrorism, the Working Group was required to consider in its report the consequences of terrorist acts, methods and practices. He wished, therefore, to state on the Working Group's behalf that detention as a result of hostage-taking or confinement in "people's prisons" was certainly a deprivation of liberty. However, as a practice without any legal basis, it was only a de facto deprivation of liberty and consequently fell outside the current mandate of the Working Group.

20. The Working Group had noted that Governments were more and more frequently resorting to the imposition of states of emergency, thereby considerably increasing the risk of arbitrary detention. It was not a question of the principle, which was provided for in the International Covenant on Civil and Political Rights, but the fact that the guarantees surrounding it were not being respected so that, for example, the emergency was all too often excessively prolonged. In that connection, he drew attention to the interesting proposal by the Government of Mauritius (E/CN.4/1995/31, para. 35) that a "special assessor" should be nominated within the Working Group, who would be responsible for assessing the situation of a particular country, including whether there was a genuine need for the proclamation of a "state of emergency" allowing derogations from certain fundamental rights. The Working Group largely supported that idea and

recommended (para. 56, subparagraph (a)) that the Commission should convert the mandate of the Sub-Commission's Special Rapporteur on states of emergency into a mandate of the Commission itself, with a broadened mandate along the lines suggested by the Government of Mauritius.

21. With regard to a follow-up mechanism, he noted that only 16 countries had responded to the specific proposal on the follow-up procedure submitted by the Working Group. The Group's suggestion, following consultations, was that, if a detention had been identified as arbitrary and the person concerned had not been released, the Government should be requested to inform the Working Group, within four months rather than the three originally envisaged, of the measures adopted in compliance with the Group's recommendations. If the Government failed to abide by the Working Group's recommendations, the Commission should then request that Government to report direct to the Commission on the matter.

22. Since the appearance of the report, however, further discussions had taken place with the High Commissioner for Human Rights on the role he should play in the follow-up procedure. More extensive consultations were required, however, and the Working Group recommended that no decision on the matter should be taken during the current session of the Commission.

23. On the subject of coordination with other mechanisms, he said that the Working Group had decided that it should not, in principle, agree to make visits to countries with respect to which a special rapporteur or some other mechanism was already established. The situation had even occurred that two or three missions were visiting a given country simultaneously, thus enabling Governments to play one mission off against another. The Working Group also considered, therefore, that a representative of the Centre for Human Rights should be specially designated to be responsible for coordinating visits by thematic mechanisms and for keeping all missions informed of the progress of the - sometimes delicate - negotiations being conducted by other missions. The Working Group also wished to emphasize that the annual meeting of special rapporteurs and chairmen of working groups should be maintained at all costs. It hoped to receive assurances from the Secretariat on the matter and firm support from the Commission.

24. Turning to the issue of the Working Group's missions to Bhutan and Viet Nam (E/CN.4/1995/31/Add.3 and 4), he said that both visits had been interesting: not only had they been the Working Group's first visits to those countries, but it had been a new experience for the countries themselves. The Working Group - which had been well received in both countries - had been struck by the paradox that its mandate precluded visits, in the re-education camps in Viet Nam, to such areas as the kitchens, which the staff had been waiting to show off. The mandate was restricted to interviewing detainees. The report noted the improvements that had been made and the improvements that remained to be made. The mere fact of the Working Group's visit had represented a major advance.

25. In Bhutan, as in Viet Nam, cooperation by the authorities had been exemplary: the Working Group had been given the freedom to choose whom to visit, where and when, and not only detainees but also judges and administrators. In the case which had provided the main reason for its visit, the Working Group had found that the detainee in question - Tek Nath Rizal -

had not been arbitrarily arrested. In addition, the Working Group had recommended that seven people should be granted a conditional amnesty. The Working Group had been invited by the King of Bhutan to pay a follow-up visit in October 1995.

26. Mr. RODLEY (Special Rapporteur on the question of torture) introduced his own report (E/CN.4/1995/34 and Add.1 and Corr.1) and his joint report with the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1995/111). With respect to the former, he said that, despite its length, every effort had been made to keep its size to a minimum. Noting that the Secretariat had been able to provide only very limited resources for his mandate, which had precluded his undertaking the research and analysis required by many resolutions, he drew attention to a substantial subsection of chapter I, namely, paragraphs 15-24, dealing with "torture directed disproportionately or primarily against women", a matter raised in Commission resolution 1994/37. He hoped that readers would find the analysis contained in those paragraphs of the report as disturbing as he did himself. The Commission might wish to express itself in favour of his being enabled to attend the Fourth World Conference on Women to be held in Beijing later in the year.

27. In the past year he had been involved in three visits to Member States, each of which had had unusual features. The first was to Rwanda, accompanying the Special Rapporteur on that country, whose report (E/CN.4/1995/7), and particularly its conclusions and recommendations, he broadly supported. He drew the Commission's attention more especially to paragraphs 60, 61, 70, 74 and 75, relating to impunity and said that the Security Council's decision to establish a tribunal was a positive step.

28. In July 1994, he had visited the Russian Federation, at the initiative of the Government of that country. The invitation had dealt primarily with conditions of detention, a matter that potentially posed issues concerning the applicability of his mandate. To his deep consternation, he had found conditions in two institutions of pre-trial detention to be torturous, as could be seen from his report (E/CN.4/1995/34/Add.1), paragraph 71 and the paragraphs that preceded it. Appreciative though he was of the Government's goodwill in inviting him and the cooperation shown by most of the officials he had encountered, he was most disappointed that no action had been taken to put an end to that intolerable situation, in accordance with his recommendation.

29. His third mission had been to Colombia, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; it had been the first joint mission of thematic mechanisms and appeared as document E/CN.4/1995/111. As indicated in paragraph 132, the Commission should keep the situation under particularly close scrutiny. In the current year, he planned to visit Venezuela and Pakistan. He would welcome further invitations, especially from the countries mentioned in paragraph 11 of his report.

30. Chapter II of his report contained the country-by-country entries. The fact that concluding observations had been made on some countries only did not imply that the problem was not extensive in countries on which no concluding observations had been made. Since the report had been finalized, the

Secretariat had received responses from the Governments of Algeria, Bolivia, Brazil, Denmark, Ethiopia, Indonesia, Japan, Pakistan, Sudan, Tunisia, Turkey, Federal Republic of Yugoslavia and Switzerland.

31. Chapter III contained the report's conclusions and recommendations. He pointed out that the latter could all be resolved into one global recommendation: an end to de facto or de jure impunity (para. 926).

32. Lastly, he drew the Commission's attention to the extremely limited resources available for the discharge of his mandate. The planning, preparation, discharge and follow-up of missions had substantially added to the already demanding workload required by the mandate and some regrettable slippages had occurred. He believed that the mandate required the services of at least two full-time professional staff, who would need the support of one or two interns or associate experts. Such tedious practical realities were required to translate aspirations into reality.

33. Mr. RHENAN SEGURA (Chairman/Rapporteur of the Working Group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), introducing the Working Group's report (E/CN.4/1995/38), said that the Commission on Human Rights had established the Working Group in 1992 to draft a text establishing a system of regular visits to prisons in order to provide prisoners with better protection against torture. The efforts of the Working Group had received widespread support, including that of the World Conference on Human Rights.

34. The goal was, therefore, to set up a preventive mechanism which would become part of the overall system of protection of human rights. The mechanism would be based on universal principles of confidentiality, independence and impartiality. The purpose was not to examine specific cases nor to condemn States parties, but rather to evaluate the conditions of prison life and make recommendations on how they might be improved.

35. At its second session, held in November 1993, the Working Group had examined and revised the first seven articles contained in the draft text originally submitted by Costa Rica (E/CN.4/1991/66). At its most recent session, held in October 1994, the Working Group had revised the remaining six draft articles. The resultant articles provided a solid framework for the ultimate elaboration of an optional protocol. In its examination of article 8, the Working Group had discussed a number of important issues pertaining to the visits which would be mandated under the protocol, including modalities and requirements. Lengthy discussions had been held on article 9, which dealt with complementarity, coordination and cooperation between the proposed new system and other regional systems. Articles 10 and 11, which were closely related and specified criteria for participating in a mission, had been examined and revised together.

36. He was convinced that the Working Group would be able to complete the first reading of the draft protocol within a reasonable period of time. It would next proceed immediately to a second reading and would then submit the draft to the Commission. It was thus important that the mandate of the Working Group be renewed.

37. He wished to thank Governments and non-governmental organizations for their suggestions and support and, in particular, to pay tribute to the efforts of Ms. Pennegard, Observer for Sweden, who had chaired the informal open-ended drafting group that had produced the draft articles.

38. Mr. Mejía Solis (Nicaragua), Vice-Chairman, took the Chair.

39. Mr. ZHANG Yishan (China) said that, while most of the rapporteurs and working groups established by the Commission on Human Rights had made constructive efforts to promote and protect human rights, some had gone beyond their mandates and had politicized the issues, thus achieving the very opposite of their stated goal.

40. The Working Group on Arbitrary Detention was a case in point. Its recent report (E/CN.4/1995/31) gave an impression of *déja-vu*, or a replay of the cold war, because it politicized human rights issues and made arbitrary attacks against sovereign States. The Working Group appeared to be setting itself up as a judge and had even declared the legislation of certain States to be invalid.

41. Under its mandate, the Working Group should limit itself to the question of arbitrary detention. Yet, in reality, it had been reviewing and evaluating the political institutions of sovereign States. It had cited in its report the existence of special ideologically inspired courts and had charged that institutions such as "people's courts" and "supreme courts of State security" failed to meet the standards of the International Covenant on Civil and Political Rights and were therefore not independent or impartial. He failed to see on what basis the Working Group was making such judgements. It seemed to have overlooked article 1 of the International Covenant on Economic, Social and Cultural Rights according to which all peoples had the right freely to determine their political status and pursue their economic, social and cultural development.

42. The establishment of political institutions and the naming of legislative and judicial organs were the sovereign choices of a particular State and had nothing to do with the question of arbitrary detention. Moreover, the report confined itself to decisions concerning developing countries, another example of the Working Group's lack of impartiality.

43. The Working Group's report was filled with examples of the type of selectivity and double standard that had been rampant during the cold-war era. It was widely acknowledged that such attitudes were detrimental to the protection and promotion of human rights. The dichotomy between countries which protected human rights and those which violated them had been rejected. Yet, paragraph 40 of the report divided Governments into two categories: democratic and repressive. He would be interested to learn what criteria were used to make such a distinction.

44. The Working Group also made rash judgements on the question of arbitrary detention. Seven of the 26 decisions contained in the report related to detainees in his country, all but one of whom was considered to have been arbitrarily detained. A break-down of those cases illustrated the methods of the Working Group. With regard to decisions 43 and 44, the Working Group had

declared those cases to be situations of arbitrary detention simply because it had not received replies from the Chinese Government within the 90-day limit. His Government had replied in connection with the case referred to in decision 53, but its answer had been ignored by the Working Group. With regard to decisions 63, 65 and 66, the Working Group had classified those cases as arbitrary detention, either giving no justification or because the reply of his Government had been deemed unsatisfactory.

45. His Government was committed to cooperating with the United Nations to promote human rights. It had seriously investigated all the accusations of arbitrary detention reported to it by the Working Group. The Working Group had, however, ignored the replies provided by his Government and had chosen to believe a handful of politically motivated and hostile individuals or non-governmental organizations. It had based its decisions on false statements and had found pretexts for classifying cases as arbitrary detention. Taking its logic to the absurd, the Working Group had labelled certain cases as arbitrary detention when the individuals involved had turned out not to exist.

46. The Working Group had expressed its desire to be invited to visit China. Yet, the lack of goodwill and impartiality on its part towards his country and its disregard for his Government's explanations made it difficult to envisage a visit in an atmosphere of cooperation.

47. His country had been under attack for many years by certain groups from the West. Certain people had tried year after year to initiate resolutions against his country in the Commission on Human Rights. Nevertheless, China had persevered in following its course and was growing stronger every year. The decisions of the Working Group served only to expose its own injustice.

48. Mr. VICENTE DE ROUX (Colombia) said that the armed conflict in his country was responsible for the majority of the human rights violations which had occurred there, and human rights issues in Colombia had thus to be seen against that background.

49. In December 1994, his Government had ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II), which set forth judicial guarantees for persons deprived of their liberty. It had pledged that it would comply unilaterally with the standards of international humanitarian law, regardless of the actions of the guerrilla movement and regardless of whether the situation in Colombia fell within the scope of article 1 of Protocol II.

50. His Government had also expressed its firm interest in the establishment of international mechanisms to monitor the application of international humanitarian law in the armed conflict, including treatment of detainees and prisoners. Colombia's High Commissioner for Peace had taken promising steps in that direction in consultation with friendly countries and international organizations. Moreover, in its policy statement on human rights, his

Government had pledged to help the International Committee of the Red Cross (ICRC) obtain from public authorities complete and timely information on arrests and imprisonments in the country and to ensure its access to all detention centres in the country.

51. In recent years, ICRC had been receiving information on arrests and had been able to visit prisons. However, those activities had been limited and had not been based on any formal agreements. In line with its policy, his Government was drafting, in collaboration with ICRC, an agreement under which the public authorities would be bound to report to ICRC all relevant information.

52. Human rights experts had been concerned about the existence of a secret system of justice in Colombia, known as "regional justice". His Government was certainly willing to discuss that issue in a constructive manner. It was convinced that, in cases involving drug trafficking, terrorism and related matters, the only way to provide some measure of protection to the officials, judges and witnesses involved was to keep their identity secret. While that strategy did not always work, it was true that murders of legal officials had been significantly reduced.

53. His Government had recently taken steps at the legislative and judicial levels to reconcile the system of secret justice with respect for the right to defence and due process. It was prepared to consider, in cooperation with independent experts and non-governmental organizations, various matters relating to that issue: broadening the geographic coverage of the regional justice offices in order to facilitate the access thereto of accused individuals and their counsel; ensuring respect for *habeas corpus* during those processes; allowing detainees to be heard by the courts; submitting in each case the protection of the identities of witnesses to an express judicial decision; and revising the legal classification of the offence of terrorism so that it could no longer be applied to legitimate forms of political dissent or social protest.

54. His Government would welcome even more interest on the part of the United Nations human rights system. In 1994, at the invitation of his Government, his country had been visited by a United Nations representative for enforced or involuntary disappearances, the Special Rapporteur on the question of torture, the Special Rapporteur on the question of extrajudicial, summary or arbitrary executions and the High Commissioner for Human Rights. He hoped that other human rights rapporteurs would also be visiting the country.

55. His country was according high priority to United Nations human rights mechanisms; it would be establishing a high-level Government committee to study and implement the recommendations of the various working groups and special rapporteurs and to elaborate periodic reports for submission to them. Particular attention would be paid to violations of the human rights of vulnerable groups such as political dissidents and the leaders of indigenous populations.

56. Mr. Bin Hitam (Malaysia) resumed the Chair.

57. Mr. HAMID (Sudan) said that freedom of expression was a public matter and could therefore be restricted for certain permissible purposes. Article 19 of the International Covenant on Civil and Political Rights listed some of those purposes and, while it did not pronounce itself on certain others which had been strongly defended by some delegations in the debate leading up to the adoption of the Covenant, it did not specifically object to them. Those purposes included instigation to criminal actions, the violent overthrow of Governments, pornography and blasphemy. The explicit or implicit limitations placed by article 19 on freedom of expression presented Governments and civil authorities with the guidelines to act effectively against threats to public order without adversely reflecting on the State's obligations under the Covenant.

58. In keeping with those principles, his Government had cooperated with the special rapporteurs, working groups and the Centre for Human Rights with regard to cases of enforced or involuntary disappearances, torture, and extrajudicial, summary or arbitrary executions. Apart from sweeping and unsubstantiated allegations, the specific cases in respect of which communications had been received from the Special Rapporteur on the question of torture and the Working Group on Enforced or Involuntary Disappearances had been investigated by the Sudanese authorities and the information obtained promptly conveyed to the Centre for Human Rights.

59. The ongoing conflict in the southern Sudan had defied attempts so far to achieve a peaceful settlement through negotiations and dialogue. That failure was due to two reasons. First, the rebel movement received political and material encouragement from certain foreign quarters with the aim of breaking up the Sudan and establishing a separate State in the southern part of the country. Secondly, the rebel movement was being abetted and incited by a number of self-exiled politicians, some of whom were attending the Commission's meetings under the umbrella of certain non-governmental organizations, including the Arab Lawyers' Union, Christian Solidarity International, World Organization against Torture, and Pax Romana.

60. Much of the unsubstantiated information supplied to the Special Rapporteur came from those sources in the context of their overall strategy to bring about the downfall of his Government, destroy the territorial integrity of the country, and participate in the wider campaign to bring about a confrontation between the West and the Islamic world. Most of the allegations against the Sudan, which were made within the political context of that confrontation, should not continue therefore to tax the time and resources of the Special Rapporteur and other competent bodies. His Government had acted and would continue to act within the limitations set by article 19 of the Covenant and the other proposals that were not included in that article but not prohibited by it.

61. Lastly, he noted that, in reporting on the information received by the Sudanese Government, the Working Group had failed to refer to the information supplied by the Government in response to its inquiries. He hoped that the suppression of that information did not indicate a deliberate attempt to cast a shadow on the Government's willingness or ability to cooperate with the

Working Group and the Centre. If it was due to a lack of coordination between those two bodies, then the matter should be looked into and corrective measures taken forthwith.

62. Mr. ZAHRAN (Egypt) said that the international community was currently engaged in a process of harmonizing national and international legislation in the area of human rights. It was important that the monitoring activities of United Nations treaty bodies, thematic rapporteurs and working groups dealing with such issues as detention and disappearance should be directed towards identifying the obstacles to full respect for human rights and making recommendations designed to reconcile the universality of human rights with the special circumstances and cultural background of individual societies. Lack of coordination and follow-up had in recent years led to a considerable wastage of resources.

63. The standardization of periodic reporting, for example, with a single questionnaire covering the administration of justice, would render possible major financial and material savings by Governments, experts and the Secretariat, promote dialogue between national authorities and human rights treaty bodies and ensure more effective monitoring and follow-up action. The Centre for Human Rights had a key role to play as coordinator and facilitator, and its financial and technical resources should be increased accordingly. His delegation therefore called on the international community to give increased support to the Centre.

64. In the aftermath of the World Conference on Human Rights, a new and more integrated approach was required to the strengthening of human rights and the administration of justice. In addition to monitoring, the identification of violations and the publishing of allegations, positive action was needed to generate awareness of the legal basis of individual and collective rights and duties, practical aspects of compliance with treaty commitments and ways of harmonizing domestic and international legislation.

65. His Government had made every effort to cooperate with the human rights treaty bodies and to carry out their recommendations, in particular those of the Working Group on Arbitrary Detention, concerning the establishment of machinery to monitor progress in ensuring the independence of the judiciary and improving the training of police officers.

66. The ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held at Cairo in April 1995, would provide an opportunity to develop cooperation between the United Nations human rights machinery and bodies concerned with criminal justice. It was to be hoped that the decisions and recommendations of the Conference and its associated workshops would consolidate the link between the protection of rights and the fulfilment of duties, on the one hand, and between the freedom of the individual and the rights of the community, on the other. His delegation would welcome closer cooperation between the Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice and also between the Centre on Human Rights and the Crime Prevention and Criminal Justice Branch.

67. He drew attention to General Assembly resolutions 44/162 and 48/137 and to Commission resolution 1994/30 regarding the provision of technical

assistance and advisory services on the administration of justice to Governments which wished to improve and strengthen their human rights situation. In that connection, he pointed out that General Assembly resolution 48/137 recommended the establishment of a comprehensive programme of advisory services and technical cooperation to assist countries in consolidating their national structures.

68. Mr. NEUDEK (Crime Prevention and Criminal Justice Branch) said that one of the first steps taken by the United Nations in the fight against torture had been the adoption in 1975 of the Declaration on the Protection of All Persons from Being Subjected to Torture by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The close relationship between the United Nations human rights programme and the Crime Prevention and Criminal Justice Branch would once again be demonstrated at the forthcoming Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders at which the human rights organs would be represented at the highest possible level.

69. The topics to be tackled by the Ninth Congress included: international cooperation and practical technical assistance for strengthening the rule of law; action against organized national and transnational crime and economic crime; the role of criminal law in the protection of the environment; improving the management of the police and other law-enforcement agencies; and crime prevention strategies, particularly those relating to urban crime and juvenile offenders. A number of workshops would also be conducted during the Congress on topics ranging from extradition to the mass media and crime prevention. The results of the Congress would be reviewed by the United Nations Commission on Crime Prevention and Criminal Justice at its session later in 1995.

70. The activities of the Crime Prevention and Criminal Justice Branch were largely operational and oriented towards technical assistance to developing countries and to the new democracies in Eastern and Central Europe. The aims of the Branch were to promote the development of effective and fair criminal justice systems based on the rule of law. The Branch also contributed to United Nations peace-keeping and peace-building missions. It enjoyed close cooperation with the Centre for Human Rights, particularly in the area of advisory services and technical assistance. That cooperation had resulted in joint participation in a number of training courses for law-enforcement and criminal-justice personnel and in a joint publication on human rights.

71. The promotion and protection of human rights depended to a large extent on effective crime-prevention policies and strategies, a well established and viable law-enforcement infrastructure, and a fair, democratic and smoothly functioning system of justice. Where a society was victimized by rampant crime and violence, citizens could hardly enjoy their human rights and individual freedoms. Where the criminal justice system was inefficient, the human rights of the individual would be affected. Where police brutality and corruption prevailed, human rights would suffer. Where there was no independent judiciary and legal profession, where prosecutors acted as an arm of the ruling party and where there was overcrowding and inhumane treatment in

prisons, human rights could not be enforced. Conversely, any efforts aimed at crime prevention and control must respect human rights and the rule of law. If not, criminal policy became arbitrary, discriminatory and oppressive.

72. Mr. Bin Hitam (Malaysia) resumed the Chair.

STATEMENT BY MR. SCHALLENBERG, VICE-MINISTER FOR FOREIGN AFFAIRS OF AUSTRIA

73. The CHAIRMAN invited the Vice-Minister for Foreign Affairs of Austria to address the Commission.

74. Mr. SCHALLENBERG (Austria) said that the adoption in 1993 of the Vienna Declaration and Programme of Action had set the scene for a new era in the promotion and protection of human rights, which had found its most concrete expression in the creation of the post of High Commissioner for Human Rights.

75. The first incumbent of that post had been employing an integrated and action-oriented approach the main characteristics of which were dialogue and cooperation, information and preventive action, coordination and identification of clear priorities. His actions had thus added a new dimension to the international human rights system, which already had an impressive record of setting international standards, and establishing mechanisms for monitoring their implementation and which had demonstrated a growing capacity for cooperation and technical assistance.

76. Despite the progress made in many countries, however, human rights continued to be violated on a daily basis throughout the world. His Government was particularly concerned about continuing grave violations of human rights in Bosnia and Herzegovina and the repressive policy being pursued in Kosovo, the Sandjak and the Vojvodina. He wished to thank the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and his staff for their untiring efforts. He hoped that the Commission would continue to address that situation with determination.

77. All Governments shared the responsibility for finding effective remedies to violations of human rights. The World Conference on Human Rights had reaffirmed that the promotion and protection of human rights was a legitimate concern of the international community. That was especially important in view of the fact that individual Governments were not always in a position to muster the necessary political will to put an effective end to human rights violations in their countries without international support.

78. To protect and promote human rights, States must establish a framework conducive to political cooperation. They must provide effective legal guarantees accompanied by appropriate administrative and legal measures. They must also facilitate dialogue with human rights organizations and activities. Citizens should also work together to build, strengthen and sustain national infrastructures for democracy, good governance and the rule of law, which were the prerequisites for the effective promotion of human rights.

79. In that context, he wished to express his country's great appreciation to President Mandela and Vice-President De Klerk for the impressive transition they had achieved in South Africa. Tribute was also due to the Commission on

Human Rights for its efforts to combat apartheid and to facilitate the transition. His Government would continue to support the further consolidation of democracy in South Africa.

80. Cooperation across frontiers and within regional and international organizations was also crucial for the protection and promotion of human rights. As a new member of the European Union, Austria would continue to contribute to the development and consolidation of democracy, the rule of law and respect for human rights and fundamental freedoms, elements which had been a consistent part of its foreign policy.

81. Nevertheless, cooperation among States was still inadequate. There was, for example, a lack of consensus on how to address certain cases of severe and persistent human rights violations. There was often a certain reluctance - sometimes motivated by political considerations - to take action even in the face of clear evidence.

82. Austria was pursuing an active dialogue on human rights issues in its bilateral relations. In his Government's view, a critical assessment of the human rights situation in individual countries was the first step to constructive cooperation. In addition to dialogue, it was setting up cooperation projects whenever possible.

83. His Government attached great importance to a number of particular issues. First among them was the situation of internally displaced persons. It fully supported the efforts of the Representative of the Secretary-General on that question to submit a comprehensive report on the legal, practical and institutional implications of the problem of internally displaced persons and recommended increased support for further work in that area.

84. A second priority issue was that of human rights in the administration of justice. International standards were not being fully implemented in that area and that was particularly so in the case of juvenile detainees. The laudable efforts of the Crime Prevention and Criminal Justice Branch and the Centre for Human Rights had to be further strengthened in order to provide effective assistance to those countries in need thereof. Towards the end of 1994, his Government had organized a meeting of experts on the topic of human rights in the administration of justice and expected the participants' recommendations to lead to a meaningful follow-up by the United Nations bodies concerned.

85. The protection of minorities was of crucial importance not only for the rights of the persons directly concerned but also for stability and peace both within and among societies and States. Recent developments in Europe and elsewhere had clearly demonstrated those close links and the need for prevention and confidence-building measures.

86. A few days previously, four members of a minority group had been killed in Austria in an act of barbaric terror that had been condemned by the Austrian people, Government and all political parties. That tragic act, which was against all the traditions of the country, only strengthened Austria's

determination to enhance the protection and promotion of minorities by combating intolerance, racism, anti-Semitism, chauvinism and recourse to violence as a means of political discourse.

87. Cooperation between States and international organizations constituted the third essential element for fulfilling the aims set by the World Conference on Human Rights. Although the number of Governments acceding to international human rights instruments was increasing, the aim of universal ratification had yet to be attained, particularly with regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Severe shortcomings were also being noted in respect of the effective implementation of those instruments by some of the States parties to them, including the problem posed by far-reaching reservations. Cooperation between individual Governments and the various special rapporteurs and working groups of the Commission could still be improved, particularly with regard to effective follow-up measures to their conclusions and recommendations. Finally, despite the growth in demand for technical cooperation and advisory services in the field of human rights, democracy and the rule of law, international programmes in those areas had yet to achieve any long-term effectiveness.

88. Cooperation among the international organizations was the fourth essential element of cooperation. The protection and promotion of human rights was becoming increasingly operational throughout the United Nations system. However, better coordination among the various agencies and a clearer knowledge of each other's work was still needed. To achieve those aims, more resources were needed from the regular budget complemented by voluntary contributions, and the forthcoming session of the General Assembly should recommend a significant increase in the resources for human rights activities.

89. The Vienna Declaration and Programme of Action identified a broad range of issues, duties and opportunities for the international community. His Government was particularly interested in ensuring the necessary follow-up to the World Conference in order to turn its Declaration and Programme of Action into real action for the protection and promotion of human rights.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

(a) INDIGENOUS ISSUES

(agenda item 19) (continued)

90. Mr. FALL (Assistant Secretary-General for Human Rights) said that a number of Government representatives had referred to the existence of a letter and documents relating to indigenous populations throughout the world. He wished to inform the Commission that the Centre for Human Rights had nothing to do with the letter and documents in question. They had been produced by the Department of Public Information and, following the objections of certain Governments to their contents, they had been withdrawn from circulation.

The meeting rose at 5.50 p.m.